M&T Bank

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Office of the Director,
Division of Resolutions and Receiverships,
Federal Deposit Insurance Corporation,
550 17th Street NW,
Washington, DC 20429-0002

Re: RIN 3064-AF03--FDIC Notification of Proposed Rulemaking to Part 370

Ladies and Gentlemen:

M&T Bank ("**M&T**") appreciates this opportunity to comment on the Federal Deposit Insurance Corporation's ("**FDIC**") Notice of Proposed Rulemaking ("**NPR**") to amend its regulation governing the requirements for Recordkeeping for Timely Deposit Insurance Determination rule (12 C.F.R. Part 370) ("**Part 370**").

M&T applauds the FDIC's efforts to reduce compliance burdens through the optional one-year extension of the compliance date, process for exceptions, and other changes made to Part 370 set forth in the NPR. However, M&T recommends some revisions to the proposed amendments to Part 370 to further reduce compliance burdens and clarify certain provisions. M&T requests amendments to Part 370 that:

- eliminate the required certification of compliance required by §370.10, or, at a minimum make key changes in the certification;
- provide at least eighteen months for a CI to return to compliance with Part 370 following a change in law that causes the CI to be out of compliance (§370.10(d));
- provide at least two years for a CI to return to compliance with Part 370 following a merger (§370.10(e));
- clarify that a CI would satisfy the requirement to take steps "reasonably calculated" to ensure pass-through account holders comply with their obligations to provide ownership information promptly if the CI made a good faith effort to amend contracts where counterparty consent is required;
- provide a one-year grace period to achieve compliance if an exception request is denied;
- eliminate the requirement to maintain grantor unique identifiers in §370.4(b)(2)(ii);
- eliminate the need in §370.4(d)(1) for loan systems to restrict credit balances on closed-end loans or on equivalent deposit balances for loan customers;

- set a cutoff threshold in §370.4(d)(2) below which Part 370 processing would not be required for credit balances on open-end loans;
- eliminate in the need §370.4(d)(1) for loan systems to restrict access to credit card balances up to SMDIA;
- include in §370.10(5)(b) additional fiduciary account types, including but not limited to public bond accounts;
- clarify in §370.2(j) or in §370.5(a) that the revised definition of "transactional features" does not apply to a deposit account maintained with a CI by a broker-dealer for the benefit of its customers as part of a program that does not permit beneficial owners to directly access the broker-dealer account at the CI;
- clarify in §370.8(b)(2) that published notices will not identify or disclose confidential information of the requesting CI(s);

To support these general comments and recommendations, M&T offers the following comments related to the indicated sections of the Discussion of Proposed Amendments and Request for Comment in Section III of the NPR:

B. Elective extension of the initial compliance date - One Year Extension

M&T supports the optional extension of the compliance date to accommodate covered institutions ("CIs") that require more time to fully comply. M&T continues to work toward compliance by the effective date, but the proposed optional extension provides CIs the flexibility to request an extension if needed. While the original three-year preparation period is significant, the time and resources required to comply with Part 370 differs depending on many factors including the CI's product portfolio, deposit records, third-party relations and information technology ("IT") systems configuration. In addition, compliance challenges tend to unfold gradually, rather than being apparent early in the process. M&T believes that the proposed one-year extension is an appropriate length of time and that this option to request an extension should be available to all CIs, as this avoids potential arguments that the FDIC was more lenient with certain CIs.

C. Compliance

C.1 Part 370 Compliance certification and deposit insurance summary report - 370.10(a)(1)

M&T appreciates the FDIC's consideration of the compliance certification and its proposals to modify Part 370.10(a). However, as described below, M&T would further recommend removal of the explicit certification requirement or, at a minimum, certain changes to the language of the certification in subsection 370.10(a)(1).

As currently expressed in the NPR, a CI's executive must certify, to the best of the executive's "knowledge and belief after due inquiry," that: (i) the CI has implemented all required capabilities and tested its systems during the past 12 months; and (ii) "such testing indicates that the covered institution is in compliance…."

M&T does not believe that the FDIC needs to obtain such an executive certification to ensure that the limited number of CIs are in compliance with Part 370. CIs are large institutions with robust compliance, regulatory, and audit regimes that are subject to oversight by regulatory authorities. CIs are required under 370.10(a) to test their systems and to file with the FDIC the "deposit insurance coverage summary report." In addition, the FDIC will examine CIs for compliance. These existing controls sufficiently ensure CIs will diligently seek to be compliant. The executive certification required under 370.10(a) does not materially change the processes for implementation and testing and, therefore, we believe the certification is not necessary. Layering an additional CEO/COO certification requirement does not provide additional value on top of the existing, robust regulatory and supervisory framework; however, it does involve incremental cost and complexity for CIs. M&T therefore proposes that 370.10(a) be amended to retain the requirement that the CIs test their systems and file with the FDIC the summary report, but eliminate the certification requirement.

However, if the FDIC retains the executive certification requirement, we strongly recommend that the actual certification language be amended to contemplate and accommodate the situation in which a CI's testing reveals some shortcoming or problem. As currently proposed, the language provides that the testing indicates that the CI "is in compliance." If, as sometimes happens with complex rules and operations, testing uncovers an issue with compliance, an executive could not make the required certification. For this reason, we strongly recommend that the language of the certification be modified to provide that "such testing indicates that the covered institution is in *substantial* compliance with this part." Further, to accommodate the possibility that larger compliance issues arise, we request that the rule permit the executive certification to be provided "subject to" identified issues found in testing or otherwise by the CI, FDIC, or other party. These types of changes will ensure that executives are better able to provide certification that reflects the actual compliance situation at the CI.

C.2 Effect of changes to law - 370.10 (d) and C.3 Effect of merger involving a CI - 370.10(e)

The NPR proposes in new §370.10(d) that CIs are permitted a period of time to come into compliance with Part 370 following a change in law that makes them noncompliant. Similarly, the proposed new §370.10(e) would provide up to a year for a CI to return to compliance with Part 370 following an acquisition or merger.

M&T estimates that it could require 18 months following law changes that significantly affects Part 370 to bring its systems into compliance and proposes such minimum period be added to this amendment. Law changes that affect Part 370 compliance could have significant impacts to CIs, such as requiring system reconfigurations, new or updated policies/procedures, restructuring of third-party contracts, gathering of additional customer data and the possibility of needing to perform Part 370 compliance testing and executive certification again. Bringing the CIs into Part 370 compliance is currently requiring the full three years allowed by Part 370 as originally adopted, and in some cases the one-year extension permitted under the NPR may be needed for CIs to achieve compliance. Therefore, it is reasonable to assume a change in law impacting Part 370 compliance would require significant time for banks to regain compliance. Accordingly, M&T asks that §370.10(d) be amended to explicitly provide that a CI be allowed at least 18 months following a change of law that affects Part 370 to regain compliance with the rule.

M&T has significant experience with mergers and acquisitions and believes that the one-year grace period provided in the NPR for achieving compliance following a merger or acquisition is insufficient. Most of the critical information necessary to achieve compliance with Part 370 with respect to the acquired institution (e.g., the status of the acquired bank's records, IT configuration and data quality) is unknown prior to a merger. Even with research and investigation pre-merger, the data complexities and true implications of Part 370 compliance would not be fully examined and understood until the merger occurs and the systems and operations are integrated, which could cause significant delays for the CI to reach Part 370 compliance following merger. Indeed, it is improper for an acquiring bank to exert influence over the activity of the target prior to merger and thus the real work of Part 370 compliance will happen after merger. In addition, to minimize customer impact in the first year following a merger, the surviving institution should be focused on successfully integrating its operations and satisfying its customers. In most cases, fully integrating systems of record and operations takes a year or more. Only after that would there be time to devote to updating processes to incorporate the additional systems and data to comply with Part 370. This is especially true when the acquired bank or merger partner was not previously a CI. Deposit assumption transactions pose similar challenges. Accordingly, M&T asks that §370.10(e) be amended to provide that a CI be allowed a minimum of two years following completion of the merger, acquisition or deposit assumption transaction to regain compliance with the rule.

<u>Additional Compliance Considerations – Effect of Pending Requests</u>

The NPR did not make any changes to §370.10(e), which provides that a CI that has submitted a request for extension, exemption, or exception will not be considered to be in violation of Part 370 while the request is pending. As the Part 370 compliance date approaches and it appears CIs, including M&T, may have exception requests pending when the compliance date arrives, including changes required in response to the final rule covered by the NPR, and going forward circumstances may arise that would merit an exception request, M&T is concerned that if an exception request is denied, the CI will not be in compliance with Part 370 immediately upon receipt of such denial. M&T therefore requests that a grace period for compliance be added to §370.10(e) by adding "and for a period of one year thereafter if such request is denied." at the end of that section. This would permit the CI a period of time to bring itself into compliance with Part 370 with respect to the issue covered by the denied exception request.

<u>E. Transactional Features</u>

<u>E.2 Proposed amendments to the definition of "transactional features"</u>

M&T believes that the revised definition of "transactional features" better supports the FDIC's ability to promptly determine deposit insurance coverage. This definition, along with the proposed changes in §370.5, would enable CIs and the FDIC to make timely and accurate insurance determinations. M&T appreciates that the amendment to the definition of transactional features helps to identify accounts that could be disrupted if not released from holds the next day post-failure; however, M&T requests that the definition be clarified with respect to certain pass-through account holders. Specifically, the definition does not seem to explain how to differentiate the treatment of deposit brokers where the “transactional features” are at the broker-dealer level, that is, a broker-dealer offers its customers deposit accounts with a CI as part of a program it offers whereby these customers may have transaction capabilities (such as check writing, debit card, etc.) in connection with their securities accounts. In such cases, beneficial owners cannot make transactions directly from the deposit accounts with the CI; rather customers make transactions in their securities accounts and the broker-dealer aggregates all customer transactions and makes a transfer in or out of the deposit account maintained by the broker-dealer at the CI. M&T request that the scenario described above be excluded from the term “transactional features” by amending the definition.

E.3. Actions required for certain deposit accounts with transactional features under §370.5(a)

M&T greatly appreciates the FDIC listening and reacting to the concerns of the CIs that they will be unable to control the actions of third parties and, therefore, that requiring the CIs to certify to those actions would be inappropriate. M&T strongly supports the FDIC’s proposed modifications to §370.5(a) and has enumerated its recommendation for further refinement below. The proposed §370.5(a) requires CIs to “take steps reasonably calculated to ensure that the account holder will provide to the FDIC the information needed for the CI’s information technology system to calculate deposit insurance coverage … within 24 hours after the appointment of the FDIC as receiver.” The revisions to §370.5 provide that at a minimum, “steps reasonably calculated” would be required to include:

- contractual arrangements that obligate the account holder to deliver all the information needed for deposit insurance determination to the FDIC in a format compatible with the CI’s IT system immediately upon the CI’s failure, and
- disclosure to the account holder that delay in delivery of information to the FDIC, or submission in a format incompatible with the CI’s IT system, could result in delayed access should the CI fail.

M&T asks the FDIC to recognize that contractual arrangements between CIs and account holders can take different forms. Some CIs may have written contracts with certain customers that would need to be amended upon mutual consent and signature, while other contractual arrangements might be amended unilaterally by the CI providing notice to the customer. In cases where there is a contract that requires consent and signature of both parties to amend, the CI cannot force the counterparty to sign. There is uncertainty as to whether pass-through account holders will agree to sign updated contracts or agreements that have requirements that the entity may not be able to fulfill. Some pass-through account holders may lack the system capabilities to maintain information in the format required by Part 370. In fact, many smaller fiduciaries and agents may lack such capabilities and may be reluctant to make the investments necessary to comply with Part 370 requirements. This may potentially cause pass-through account holders to consider cheaper alternatives, such as moving business to institutions not required to comply with the requirements of Part 370. If revised contracts or systems enhancements are required, these accounts may be driven out of CIs in favor of non-CI banks – which does nothing to enhance the FDIC’s resolution process – or to inform such customers that access to their funds may be delayed as the proposed amendment requires.

The difficulty in amending contractual arrangements may be most acute for pass-through account holders with sub-tier relationships, generally in the area of deposit brokers. In these situations, the pass-through entity itself may not maintain the depositor information and will be required to rely on their counterparties to provide this data. These pass-through account holders generally would not have control over whether their counterparties had the capability to produce the required information and in turn may be hesitant to sign a contract stating they will provide depositor information within the first 24-hours post-failure.

If such contractual arrangements are not effectively amended by the compliance date of Part 370, a CI will need to submit an exception request. Rather than requiring executed contracts in such cases, reasonable steps for compliance should include the CI negotiating in good faith for such contract changes. In addition, given the number and variability in pass-through relationships, it could take time to fully update agreements and could go beyond the April 1, 2020 timeframe. M&T suggests the FDIC recognize the existence of these impediments and potentially consider allowing contracts to be updated as they come due or are otherwise amended. If the pass-through account holder cannot or will not meet performance requirements or refuse to sign the updated contract, then the CI should not be expected to be 100% compliant as long as it ensures proper disclosures are made.

The "steps reasonably calculated" standard should include the CI negotiating in good faith for such contract changes. In addition, Part 370 requires that the information be provided within 24 hours following failure. The obligations of the account holders under the revised §370.5 require such account holders to contractually agree to provide such information "*immediately*." The contractual provisions should align with the rule. To address these concerns, M&T recommends revising §370.5(a)(1) to provide as follows:

> ***a good faith attempt to enter into*** contractual arrangements that obligate the account holder to deliver all the information needed for deposit insurance determination to the FDIC in a format compatible with the covered institution's IT system ***within 24 hours after*** the covered institution's failure ***and, if unable to enter into such contractual arrangement, to disclose to the account holder such requirement***, and

There has been discussion of eliminating the distinction in §370.5(a) between pass-through accounts with transactional features and other types of pass-through accounts that do not have transactional features. M&T believes that the proposed revisions to §370.5(a) would afford CI's the option to focus on pass-through accounts with transactional features or to treat all pass-through accounts in the same manner. Thus, one of the benefits to the proposed amendment is that a CI can streamline compliance, if it chooses to do so, by treating all pass-through account holders the same. Some CIs may elect this course solely to simplify implementation of Part 370, while others may also be influenced to do so because its customers wish to expedite resolution of their accounts, including those without transactional features, should the bank fail. That said, M&T recommends retaining the references to accounts with "transactional features" so that CIs have the flexibility to distinguish between such accounts if they so desire.

M&T appreciates the FDIC's approach to rely on the contractual and disclosure requirements which transfers the burden to the pass-through account holders and requires depositor information to be delivered in a format compatible with the CI's information technology system.

E.4 Exceptions from the requirements of 370.5(a) for certain types of deposit accounts

M&T supports the retention of exceptions to §370.5 for the types of accounts listed in revised §370.5 (b)(1)-(5). Although the compliance requirements of §370.5(a) have been lessened under the NPR, we believe that retention of the expanded list of accounts excepted from the requirement is flexible and beneficial. In particular we think it is important to include the exception for trust accounts in subsection (5) because many of the fiduciaries responsible for these account may have a difficult time securing, validating, and submitting required information within 24 hours, and, given their fiduciary duties, may be very reluctant to agree to provide this information in such a short time frame if they are unable to do so practically. It is relatively unlikely for a trust, trustee or ultimate beneficiary to require immediate access to funds in a trust account, even in an account type (e.g., a checking account) that permits a broad range of transactions, including to third parties.

Generally, the ability to track the three types of trust accounts captured in this provision is not consistent among CIs or trust affiliates. While generally a CI may have the ability to track trust attributes, many times it is difficult to determine the nature of these trust capacities without accessing the applicable trust agreements.

The FDIC inquired whether commenters believe that other types of deposit accounts be included in the list of exceptions set forth in 370.5(b). M&T suggests that additional custodial accounts, agency accounts and fiduciary accounts that are not used for day-to-day transactions should be included in the list of exceptions in addition to the employee benefit accounts currently included in list of excepted accounts. These should include other types of retirement accounts and employee benefit plans, public bond accounts and other types of custody and agency accounts, including those maintained within trust departments of the CIs or trust departments of affiliates of the CIs. Due to the nature and structure of the custodial, agency and other fiduciary relationships, the large majority of these accounts do not require immediate access to funds on deposit. This exception would more accurately reflect the reality of the account relationships and eliminate the need for exceptions to be filed. Similarly, custodial and agency account owners, particularly those maintaining relationships within trust department, in the majority of cases do not require immediate access, and, therefore, consequences would be minimal.

F. Alternative Recordkeeping

F.1 Alternative Recordkeeping Requirements for Certain Trust Accounts - *370.4(b) (2)*

Under the NPR, the FDIC would eliminate §370.4(a)(1)(iv), which would then allow "alternative recordkeeping" for irrevocable trust deposit accounts for which the CI acts as trustee (i.e., trust accounts insured pursuant to §330.12, and commonly referred to as "DIT accounts"). CIs would not need to provide a unique identifier for beneficiaries entitled to deposit insurance, nor for the grantor of a DIT.

M&T strongly supports this change to permit alternative recordkeeping deposit accounts for DIT trust accounts. Like many CIs, M&T's trust department maintains a significant amount of information about trusts it manages as trustee, but not all beneficiary and grantor information may be readily available or current. Most of the information is maintained in trust documents and is not on the systems of record. This information is updated periodically as appropriate for administering the trusts or accounts, so it would be cumbersome for the CI to maintain. In some cases, it would also impact the customer relationships as they would need to separately provide the information to the CI. In practice, the deposit insurance status of a particular trust will likely be determined only after completion of an individualized review of the grantors, beneficiaries, and other facts and circumstances. Permitting "alternative recordkeeping" facilitates completion of this labor-intensive process and, because the majority of these accounts do not need immediate access to funds, the cost to implement would be significant compared to the potential benefit.

In addition, the NPR proposes to modify §370.4(b)(2)(iii) to require the CI to maintain in its records the corresponding "right and capacity" code for trusts instead of the "pending reason" code. M&T respectfully requests that the FDIC retain the current requirement for "pending reason code." Provisions in the trust agreement, as well as changes in facts and circumstances, may alter the right and capacity of a trust without the bank's knowledge. This is true with all types of trusts, but especially in situations in which the CI is not trustee. For example, a CIs records may not reflect that a revocable trust has become irrevocable due to the grantor's death if it has not been informed of such death. Again, while changing information may present difficulties for all types of trust categories, it is particularly difficult for a CI that is a mere depository to remain informed about changes in trust grantors and beneficiaries. In many cases the independent trustees continue in their offices and there is no reason for the CI to be alerted to changes. That said, a CI will know that it lacks current or accurate information that is essential to an accurate deposit insurance determination and, therefore, would be able to record the "pending reason" code.

The proposal seeks comment on the practice and ability of CIs to obtain grantor information on trusts for which the bank is not trustee. Although the grantor's name may have been recorded in the trust certification or other documentation when the account was opened, a unique identifier, such as a Social Security number, many not have been obtained. However, identifying information for the grantor is often somewhere in CI records, such as a paper file.

In many cases, grantor information may not be readily accessible. For these reasons M&T requests that the FDIC grant all formal trusts flexibility similar to that now afforded to DITs under the NPR, so that CIs need not record grantor names and unique identifiers in deposit recordkeeping for any trust deposit account, including those insured under 12 CFR §330.10 and 12 CFR §330.13. In sum, the FDIC should eliminate the requirement to maintain grantor unique identifiers in §370.4(b)(2)(ii), acknowledging that this information will be obtained during resolution of a bank.

The FDIC specifically inquired whether the identity of a trust's grantor is typically maintained in a bank's records and for which types of accounts this is the case. As described above, the unique identifier for the grantor on formal revocable, irrevocable and DIT irrevocable trust accounts, covered under this provision, are generally not kept on the deposit system of record. The grantor information is contained in the trust account agreements or certificates of trust for these trusts but is not needed for the bank, as depository, to allow trustees to transact on deposit accounts, and may well not be needed to administer trust transactions when the bank trust department is the trustee. As a result, this grantor information generally is not readily accessible. Consequently, the ability to provide a unique identifier and grantor information is limited, as this information is often unknown unless the trust agreements are accessed. The same is true regarding right and capacity, which is proposed to be included in place of pending reason, as stated in the current Part 370. There is no benefit to accessing this information prior to bank failure and these accounts should be in the pending file with a process to update that information at bank failure. In addition, the unique identifier for the trust and information about the trustee is typically the only information tracked, and as the other trust related information is contained in trust documents, so it would be difficult to go back and access that information. This is the situation for trust department account relationships as well, whether maintained through the CI's trust department or the trust department of an affiliate. The same is true for "right and capacity" information, which is part of the proposed change. In many cases the type of trust for deposit insurance purposes is unknown and would require accessing the trust agreements, as well as questioning others and conducting other inquiries to determine the status of various beneficiaries. The current rule requires a "pending reason" code and, because these accounts will be in the pending file, we request that the FDIC reject the proposal to require "right and capacity" codes and, instead, retain the "pending reason" code requirement.

F.2 Recordkeeping requirements for deposits resulting from credit balances on an account for debt owed to the CI

New §370.4(d)(1) would require that a CI's IT systems be capable of restricting access to either loan credit balances or an equal amount in the deposit balance for every customer with a loan credit balance as of close-of-business on any day. New §370.4(d)(2)(i) would require that a CI's IT system be able to generate a file for loan credit balances in the format of Appendix C. For credit balances on open-end loans (revolving credit lines), the file would have to be producible within 24 hours of the CI's failure.

Treating credit balances on loan accounts as deposits does not align with most bank systems and creates significant challenges for CIs. The addition of proposed §370.4(d) compounds the problem rather than providing a solution. Most loan systems are not set up with an ability to freeze loan overpayment credit balances as that is not a function that would be necessary or even utilized in daily operations.

Loan credit balances are created by a customer paying an amount in excess of the amount necessary to pay the loan in full. Such balances are almost always far smaller than the FDIC's "standard maximum deposit insurance amount" ("SMDIA") as they are usually made because of a mistake in computing the amount due or because a credit was posted after the payment was made. Loan customers may only overlap to a minor degree with deposit customers, so such overpayments may have minimal impact on deposit insurance calculations. In contrast, developing capabilities to be able to include these amounts in the calculations would be an involved and expensive undertaking for CIs.

CIs face major challenges to link loan credit balances to customers' deposit accounts because certain information, such as ownership rights and capacities, is not gathered systematically for loan products and in most cases does not align with information for deposit products. To require data in the format of Appendix C as set forth in the proposed rule would be a significant challenge due to differences in the method of data capture between loan and deposit systems. Configuring the systems to produce the deposit file for all credit balances would require significant time, while the benefit for the clear majority of credit balance instances would be negligible.

Restricting access to loan overpayments for all credit customers would frustrate many whose deposits, if any, plus credit balances are below the SMDIA.

Closed-end loans are not transactional in nature and customers do not expect immediate access to these funds, as most customers don't consider them to be deposits. Refunds on closed-end loans are routinely processed by CIs. Customers do not expect to receive an overpayment on a closed-end loan by any means other than refund. There is no reason that closed-end loans could not be processed in due course following failure. Therefore, credit balances in closed- end loans accounts should not need to be systematically restricted at CI failure, and should be removed from the proposed requirement that the CI produce a file listing the credit balances in the format provided in Appendix C. Instead, Part 370 should permit a CI to process these files manually. The unique identifier information used to aggregate closed-ended loans with the depositor's other existing deposits at the bank can be manually prepared and, even if it takes multiple steps and several days to aggregate, it should not materially impact on the depositor or the calculation of FDIC insurance coverage.

Risk to the FDIC insurance fund with respect to revolving credit products, or open-end loans, is driven in large part by whether credit balances can be restricted to prevent depositor access and the size of the credit balance. If access to credit balances can be restricted, then the aggregation process should be allowed to take more time and be more manual in nature. If the CI systems do not permit access to be restricted, the size of credit balances should also be a factor, as insignificant credit balances do not support the need for developing costly identification and aggregation processes. We recommend consideration be given to the dollar size of the credit balance by establishing a cutoff dollar amount for credit balances which would identify balances that are material (such as amounts over $200,000, which is still below SMDIA). These significant balances could be frozen and aggregated within 24 hours. Isolating high credit balances and dealing with them on a manual basis would bring the cost of compliance with this portion of Part 370 more in line with the benefit and should not materially impact on the depositor or the calculation of FDIC insurance coverage.

A focus on the size and impact of revolving loan account's credit balances would allow for banks to identify and appropriately handle outlier credit amounts. For example, products such as retail credit cards tend to create a significant number of credit balances, however, those balances are largely immaterial with a majority of such credit balances being under $1. Therefore, the cost to modify the retail credit card IT system to produce the file set forth in Appendix C would be significant with minimal benefit to the bank or the FDIC's risk of releasing uninsured funds. In addition, credit card systems do not distinguish between a debit *vs.* credit balance in a way that would allow them to be treated differently with respect to holds. As a result, these systems are not set up to place holds on credit balances. A bank cannot simply take a snapshot of credit card accounts to identify credit balances as of close-of-business when the issuing bank fails; a cardholder may have incurred transactions earlier in the day that won't be posted until after failure. To restrict access, a CI would likely have to freeze all credit card accounts where there are credit balances, which would be very disruptive for those who rely on credit card transactions for daily purchased (gas, food, transportation, *etc.*)

To accomplish this, systems of record that cannot freeze credit balances would need to be enhanced. Many systems are supported by third-party vendors, which makes the compliance cost increase and implementation process difficult. A system functionality to capture the loan customer information would need to be developed and be capable of capturing information in Appendix C format. This information would then need to be integrated accordingly across various loan and deposit systems. The challenge is that loan systems are separate from deposit systems and therefore customer information is a significant challenge to integrate quickly. In order to freeze the respective credit amount from the loan system on the deposit system, a matching process would need to take place, which is not currently within bank capabilities. Developing these capabilities would be a significant undertaking and is likely a costly option for banks to invest in and develop today.

In order to support accurate deposit insurance determinations and also limit the operational cost of integrating loan credit balances into Part 370 processing, consistent with the proposal's overall purpose, M&T advocates that §370.4(d)(1) as proposed be amended to recognize:

- For credit balances on closed-end loans, IT systems should not be required to be capable of imposing restrictions on loan credit balances or on equivalent deposit balances for the loan customers. Such restrictions are not necessary should the bank fail because customers' do not have direct access to the loan credit balances so that such balances can be processed in due course following closure.
- For open-end loans, the FDIC should set a cutoff for loan credit balances, perhaps $200,000, below which Part 370 processing would not be required prior to bank failure.
- No requirement should be imposed that would require freezes for credit balances on credit card accounts, as these would be highly disruptive for many credit card holders. At the bare minimum, holds should never be required for such balances where the total credit balance does not exceed the SMDIA.

M&T further advocates that proposed §370.4(d)(2) be amended to eliminate the requirement that a file be in the form of Appendix C and, instead requests that the provision permit CIs to develop manual processes to match customer information regarding loan overpayments and deposits, concentrating on high balance overpayments. For those accounts (regardless of credit balance amount) that do have an associated deposit account at the CI, the CI can provide a list of accounts that show the combined accounts and combined amounts for each ORC. For combined balances of accounts that exceed the SMDIA, the FDIC would be able to adjust insured-vs.-uninsured balances to ensure that only truly insured amounts are paid out.

G. Relief / Exceptions - 370.8

M&T supports expressly allowing submission of a single request on behalf of multiple CIs and publishing FDIC responses, which would be of value to all CIs. While the discussion of the proposed amendment contained in Section III.G.2 of the NPR indicates the notice of exception would not disclose the identity of the requesting covered institution(s) nor any confidential or material nonpublic information, the proposed new §370.8(b)(2) does not contain this language. Therefore, M&T advocates that §370.8(b)(2) be amended to reflect the sentiments in the discussion portion of the NPR and read:

> The FDIC shall publish a notice of its response to each exception request in the Federal Register. ***Such notice shall not disclose the identity of, nor any confidential or material nonpublic information of, the requesting covered institution(s).***

M&T also supports the addition of §370.8(b)(3) which permits a CI to use a published exception immediately after notifying the FDIC that "substantially similar facts and the same circumstances" apply. However, M&T believes the 120-day period for the FDIC to notify the CI that the exemption is denied is too long and should be shortened to expedite the overall process. M&T suggests 60 days as more realistic timeframe as CIs will need to take action relative to the request. Also, M&T advocates that "substantially similar facts and the same circumstances" be amended to read: "**substantially similar facts and circumstances**," by deleting the words "the same" before the word "circumstances."

M&T recognizes and appreciates the time and effort the FDIC has put into the proposed changes to Part 370 which provide relief to CIs in their efforts to comply with Part 370. However, for the reasons set forth above, M&T requests the additional amendments outlined herein be made to Part 370 to better align the burdens of Part 370 with its benefits and further reduce the significant costs that CIs have already incurred in complying with Part 370. Such proposed amendments will not inhibit the FDIC's ability to expeditiously resolve an institution but will provide much needed relief to CIs.

We appreciate your consideration of this exception request and would be pleased to discuss the topic further with members of the FDIC.

Very truly yours,

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